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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON
12

13 PAUL STRASTERS and)
14 ZADELLE STRASTERS,)
15 a married couple,)
16)

17 Plaintiffs,)

NO. CV-10-3070-RHW

18)
19 vs.)

PLAINTIFF'S BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION TO STRIKE

20)
21 WEINSTEIN & RILEY, P.S.,)
22 a debt collection agency and)
23 WELLS FARGO BANK, N.A.)
24 a nationally chartered bank)
25 holding company;)
26)

27 Defendants.)
28)
29

30 Defendant's Motion to Strike should be denied as misguided. First,
31 Defendant asserts that the response was due on May 27, 2011 and is formally and
32 technically correct. However, Defendant fails to inform the court that this day was
33 the day after the mediation hearing. Thus, believing that Defendant requested the
34 mediation hearing in good faith, Plaintiffs did not begin work on their response to

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1 summary judgment until the mediation hearing failed to reach a satisfactory
2 conclusion. Plaintiffs did not anticipate that Defendant was using the mediation
3 hearing as a trap to prevent pleading in the summary judgment matter.

4 Second, Plaintiffs were awaiting responses to their discovery requests which
5 were first submitted to Defendant around November 16, 2010. It seemed
6 reasonable that since a Motion for Summary Judgment is highly fact intensive that
7 Plaintiffs should be entitled to discovery prior to responding to it. However,
8 Plaintiffs wanted to ensure that Defendant had adequate notice of its objection to
9 the motion and thus submitted its response despite a lack of discovery.

10 Third, Plaintiffs' Brief in Opposition to Summary Judgment was primarily
11 one of fact, not law. Even if the Brief should be stricken "Ninth Circuit precedent
12 bar district courts from granting summary judgment simply because a party fails to
13 file an opposition or violates a local rule." *Ahanchian v. Xenon Pictures, Inc.*, 624
14 F.3d 1253, 1258 (9th Cir. 2010). Additionally, a district court is "obligat[ed] to
15 analyze the record to determine whether any disputed material fact [is] present."
16 *Id.* Indeed, the only reason Defendant might have submitted its Motion to Strike is
17 in hopes that this Court would then assume that its unsupported assertion that the
18 parties to the settlement agreement intended it to include Defendant. However,
19 there is ample evidence that this is not the case.

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1 Defendant's sole assertion in the Motion for Summary Judgment is that it is
2 undisputed that at least Wells Fargo intended Weinstein & Riley to be a
3 beneficiary of the settlement agreement. However, Weinstein & Riley have not
4 produced an affidavit or any other document which supports this. As such there is
5 no need for Plaintiffs to even respond to this motion as it is unsupported and there
6 is clearly a disputed fact.

7
8 **CONCLUSION**

9 Defendant's Motion to Strike is irrelevant to whether summary judgment
10 should be granted. Defendant has not produced clear and convincing evidence that
11 the parties to the settlement agreement intended Weinstein & Riley to be released
12 from the lawsuit. Ninth Circuit precedent requires that a district judge consider
13 this regardless of whether Plaintiffs respond or not.

14
15 Dated this 27th day of June, 2011.

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17
18 
19 Robert J. Reynolds WSBA #5796
20 Attorney for Plaintiff

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CERTIFIED STATEMENT
OF TRANSMITTAL

Certificate of Service

28 The undersigned certifies that on June 27, 2011, a copy of the attached document
29 was electronically transmitted to the Clerk's Office using the CM/ECF System for
30 filing and transmittal of a Notice of Electronic Filing to the following CM/ECF
31 registrants:

32 Jason D. Anderson
33 jasona@w-legal.com
34

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By: s/ Robert J. Reynolds
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Attorney for Plaintiff